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INTERNATIONAL TERRORISM

How to deal with the threat of international terrorism? United Nations Secretary-General Kofi Annan has told the world community that the fights against terrorism cannot be "merely symbolic" and that "the whole international community has come together to fight the scourge of terrorism". But how can we put words into action? In this edition of **World Chronicle,** Hans Corell, United Nations Under-Secretary-General for Legal Affairs, discusses the various international conventions and resolutions that have been adopted by the UN in dealing with the dangers posed by global terror.

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ANNOUNCER: From United Nations Headquarters in New York, this is **World Chronicle**, an unedited interview programme about major global issues.

Here now to introduce our guest is the host of today's **World Chronicle**.

LITTLEJOHNS: I'm Michael Littlejohns, and this is **World Chronicle**. For the last four decades, the United Nations has been deeply involved in the fight against terrorism. International conventions dealing with issues such as aircraft security, hostage taking, protection of nuclear material, bombings and the financing of terrorism have been signed and ratified by many UN member states. Recently, the United Nations Security Council unanimously adopted a resolution that expressed unequivocal condemnation of the terrorist attacks on the United States on 11th of September, and also proposed wide-ranging strategies to combat international terrorism. But now exactly can such conventions and resolutions work to rid the world of the dangers posed by terrorists? Our guest today is the Legal Counsel of the United Nations. He is Hans Corell, Under-Secretary-General for Legal Affairs. Joining me to talk to Mr. Corell are Afsane Bassir Pour of *Le Monde*, and Carola Hoyos of the *Financial Times*. Mr. Corell, welcome to **World Chronicle**.

CORELL: Thank you.

LITTLEJOHNS: Mr. Corell, this is a connection of the conventions, of whatever, that have been adopted by the UN on the question. Now, none of them is going to be of much us if member states don't comply. What more can the UN do to ensure compliance and meet th threat of terrorism which has become even more prominent as the terrible tuesday of September 11?

CORELL: Yes, you are right; the conventions alone cannot fight terrorism. The purpose of the conventions is to achieve a common standard based on a political will among states to achieve these goals. They will then be translated at the national level into national laws, and these laws have to be observed by the states. But as you say, if the laws are not observed, then crimes are committed. This is a general problem. In the United Nations, I think we have the forum in the world where you can best discuss these matters and achieve th common political understanding that these acts are simply not permitted and they have to be fought wherever they occur.

LITTLEJOHNS: Mr. Corell, one great weakness in the UN's involvement with the whole problem of terrorism, is that the member States so far have been unable to agree on a definition of what terrorism actually is. Is there such a thing as a definition under international law beyond what the UN might be able to come up?

CORELL: The member states show the avenue of solving one issue at the time once they occurred. You mentioned the high-jacking and the safety of civil aviation and so on. When these elements first occurred, member states chose to address them. But lately they have come to understand that they have to look at the more general issues underlying this phenomenon, and one is financing of terrorism. And there is a convention on financing of terrorism whether it is a general definition or so of terrorism, but otherwise they refer to the definitions that you will find in each and every one of these conventions. There is now in October 2001 a working group that is engaged in negotiating a global convention against terrorism, and one of the items on the agenda here is the question of definition of terrorism.

LITTLEJOHNS: Has the group made any progress to your knowledge?

CORELL: When this interview was made, the group just started its work. They started on the 15th of October. But I participated in the General Debate here, and I sense that there is an understanding, that after these last events, I think the moment has come in history when member states simply have to join hands, all of them, and come together against this scourge.

LITTLEJOHNS: I am sure that is good news

BASSIR POUR: But can this actually hinder any progress in the General Assembly in the United Nations on terrorism? Because, as you well know, one men's terrorist is another man's freedom's fighter. And some countries are worried that this could bog down as they say in the General Assembly, and not go any further, which would maybe, you know, make a distance between the Security Council and the General Assembly. Do you foresee that we may get bogged down in this in this definition?

CORELL: I would hope that it would not be bogged down. And the Secretary General addressed this matter when he spoke to the GA on the first of October. He said that this is a moral issue. And surely there is one thing we should be able to agree on, and that is that willful killing of innocent civilians is simply not acceptable, whatever the cause.

BASSIR POUR: So whether it is freedom fighting or terrorism, any deliberate act of taking life is terrorism. This is what the Secretary General says. Legally, how would you put that?

CORELL: Well, I would not preempt the work of the member states here. They are presently engaged in October 2001, presently engaged in trying to define this general definition. But otherwise, there are in several conventions already definitions there, but what is needed is a global definition of terrorism.

HOYOS: What would interest me is the legal difference between the resolution, the second resolution that the Security Council passed after the Sept 11 bombing, where they very cleverly didn't define terrorism but were still able to threaten sanctions on countries that didn't fight terrorism, and the difference between that and the conventions. And how you interpret this resolution that was passed two weeks after the September 11 bombing?

CORELL: Basically it is for the Security Council itself to construe its resolutions, so I would be very careful here not to express any opinion on how they should be construed. But I can explain the legal difference here. The first resolution was adopted on the 12th of September, and that is a very short resolution where they invoke a provision on self-defense, and then indicate that they intend to take further measures, but above all say that those who perpetrate, those who are the perpetrators here, they should be brought to justice. The second resolution is an unusual resolution in the sense that it is a global resolution focusing on financing of terrorism and some other elements here, basically fighting terrorism through investigations, through international cooperation and so forth, that resolution is adopted under Chapter 7, the chapter that gives the Council the right to adopt binding resolutions on the membership. So what happened here is that all members are instantly obliged to follow that resolution. But it is not a simple resolution, it is a very technical resolution, therefore some member states are concerned that they don't have the technical expertise at the national level to introduce the necessary legislation here. But I know that the committee that was established under the Security Council to deal with these matters, they are focusing on precisely this issue presently in October.

BASSIR POUR: I just wanted to follow up on this point actually: the resolution you just mentioned, 1373, actually puts all member states under threat of sanctions, all 189 of them

if they don't extradite terrorists or if they don't do a certain number of things. Has this ever been done before? To threaten all of the members with sanctions.

CORELL: Well, the Council often adopts resolutions under Chapter 7, but normally they are focused on a particular situation. So if they focus on a situation somewhere in the world, adopt a resolution under Chapter 7, and for example forbid states to have commerce or have, should I say, relations with a particular state, then all states are obliged to follow that resolution. There are also the famous resolutions where the Security Council established the two criminal tribunals, the one for the former Yugoslavia, and the one for Rwanda. There the whole membership is immediately bound by those resolutions, and have to cooperate with the tribunals. In this instance, what the council has done is to focus on a general phenomenon, and irrespective of where it occurs in the world; so in that sense, I think that one could say that the resolution is unprecedented.

LITTLEJOHNS: Carola, you had a question.

HOYOS: Yes, my follow up was: Does the fact that the Security Council passed this resolution, this binding resolution, mean that we now don't need this umbrella convention that the General Assembly is looking at? What are the differences between the umbrella convention that the 6th Committee, the legal committee of the General Assembly is now trying to debate, and the Security Council resolution?

CORELL: The difference is that the convention against financing is elaborated in the traditional way. When States feel that they have to come together to solve a common issue, then they negotiate a treaty, an agreement. And then they sign the agreement, and that signature is a promise that they will go home and present this treaty to their parliament, and parliament would ratify the treaty, and also introduce in most cases the necessary legislation at the national level. When that is done, then the Ambassador here in New York will come to the Secretary-General and present an instrument of ratification. And then we enter that in the books here. And then everybody knows that this particular state has ratified the convention, it is bound by it. The Security Council is separate. Because this is a unique thing in the charter that the Security Council has the right, under Chapter 7, to adopt binding resolutions immediately. So it is a different legal nature of this. But this doesn't mean that the two cannot complement each other. And we do not know what the Security Council can do in the future about this resolution. So the convention has a value per say that the Security Council

resolution would in principle require the same kind of legislative work at the national level as the convention does.

LITTLEJOHNS: Mr. Corell, you mentioned the International War Crimes Tribunals for Yugoslavia and Rwanda. Would you think that it might be a good idea to have some kind of international tribunal to deal with people like these guys who were responsible for that horrendous event of September, I mean, to bring them to a national court if you finally get hold of them? It is going to be an endless process. Any opportunity of internationalizing it, would you say?

CORELL: Let me answer that question more on a principled basis than with a particular reference to what happened on the 11th of September because I think it would prudent for me not to get involved in the details there, it is for member states, and they are actively engaged in solving this very tragic event and its aftermath. What I would like to do is to focus on the future. And here we saw how the Security Council established two tribunals, one for Yugoslavia and one for Rwanda, but these are ad-hoc tribunals. And these again were unprecedented decisions by the Council. But ever since this organization was established, the issue of a permanent international criminal court has been on its agenda and, all of a sudden, this issue took a tremendous, shall we say, push forward in the early 90's. And I think, probably, it was because of what happened in Yugoslavia and in Rwanda. So in Rome on 17th of July 1998, there was adopted the Rome Statute of the International Criminal Court. That court will have jurisdiction over genocide, over war crimes, and over crimes against humanity. Now there are those who claim that what happened on the 11th of September amounts to crimes against humanity. So in the future, if something similar happens, then this court would have jurisdiction. But also in the legislative process, in the discussions among member states, before the Rome conference, there were those states who thought that also terrorism should be included in the statute of the court, and I know that for example the Parliamentary Advisory Assembly of the Council of Europe, they've already voted to encourage the States, who are members of the Rome Statute, and there will be 60 probably within a year or so, we will have 60 member states; that these states should put on their agenda the question of including terrorism in the Rome statute.

LITTLEJOHNS: This is **World Chronicle**, our guest is Hans Corell, Under Secretary-General for Legal Affairs at the United Nations. Afsane!

BASSIR POUR: Now since September 11th, I understand about 12 countries have ratified the statute for the International Criminal Court. Now, as you say, maybe by beginning of next year, we will have the necessary 60, but not the United States. They still remain very much opposed to this Court. How would you see an international Criminal Court functioning without a super-power? I mean without THE super-power?

CORELL: This is a delicate matter, but I think I have to be honest. We are many around the world, who are deeply disappointed that the United States has not been in a position to support this Court fully. We should recall that after the Second World War, when those responsible in Nazi Germany were brought to justice in Nuremberg, it was at the insistence of the United States that the Tribunal was established. They insisted that we should now behave in a system under the rule of law. The person should not just be executed. They should be brought before a Court, a fair trial, trial should be held, and then the justice would take its course. Since then, tremendous efforts have been made around the world to establish this International Criminal Court. Who is this Court to protect? The weak, the vulnerable, women, children, elderly, those are the one who suffer in armed conflicts today. And this Court is meant to punish those who commit these crimes, and also to act as a deterrent for future warlords. They should know that there could be a few hours between their proud camp somewhere in the world, and a prisoner cell in the Hague in the Netherlands, where the Court will have it seat. I think we are many who hope that the United States will come aboard and eventually I am convinced that they will.

BASSIR POUR: Could you give us an example? It is not just the United States, for now, that is reticent. Why are countries reticent to do this? Because, as you explain this Court is there to defend the victims. What kind of situation would make them wary of signing, of ratifying?

CORELL: That is a question you'll have to put to them. I cannot see for example that soldiers of an army of a country which has a functioning legal system would ever come before this Court. The Court is complementary. The Court will only enter into function if the system at the national level either is impotent, because of political reasons that they won't prosecute (I sometimes mention the former Yugoslavia, when that tribunal was established, there was no will on the part of the states there to prosecute those suspected), or where the judicial system simply has disintegrated, like in Rwanda where the judges were either killed or had fled the

country. And so, those are the situations when the International Criminal Court would enter into function. A state like the United States will bring their own suspects to justice as they have done in the past.

HOYOS: Then I will maybe play the devil's advocate a little bit, and say that the US has supported some of the ad-hoc Tribunals; I would say that it is one of the most supportive states in regard to the Tribunal in the former Yugoslavia. Why not continue along the vein of the ad-hoc tribunals rather than try to take away this geographic limitation and have a broader court.

CORELL: I think we have to look at our history and look into the future to the horizon. This requires statesmanship on parts of governments. If you go back in the history of your own country, you will find that it took centuries to build up the legal systems that you have there. Gradually, we have come to understand that borders are simply not appropriate to define criminality. Borders can no longer be set to protect or shield those that have committed crimes of this magnitude. So therefore I predict that what we see now are only the first steps of a world community of states that is trying to establish an international criminal justice. The sovereign state, I see no alternative to the sovereign state; there has to be some order in the world. But there are formidable threats to the sovereign state, and we have just seen some of them. So what I do not understand is why not all states realize that they have to join hands, and the law is just as important for the strong and powerful as it is for the small nations, the weak. And finally, I promise you, that if this programme is ever shown in 30, 40 years time, people then will probably talk about the Rome conference as one of the most important conferences, if not the most important conference in the legal field in the 20th Century.

BASSIR POUR: If this Court existed now today as we speak, would these acts of atrocities of 11 September be considered as crimes against humanity and the perpetrators could be brought in front of this Court?

LITTLEJOHNS: There are those who say that these crimes amount to crimes against humanity. I would rather not pronounce myself on that issue. I would prefer to see all the facts first because a decision would first have to be taken by a prosecutor, and the prosecutor would have to formulate the indictment, and then the case had to be brought before the Court. But as I say there are those who maintain that this amounts to crimes against humanity.

LITTLEJOHNS: Mr. Corell, in the immediate aftermath of the September 11, the UN in the Security Council and the General Assembly showed an impressive unanimity in its responses. Since then, it hasn't been quite so easy; proposals in the General Assembly were shelved for the time being which might have carried the UN process a bit farther along. Do you detect perhaps a faltering in the resolve of the member states in this situation?

CORELL: I would hope not. The Secretary-General has very clearly made his views known to members. And I think we should realize that in October 2001 we are still in shock after what happened. We haven't still been able to fathom the implications of what happened on the 11th of September. And also maybe many states have to revisit old stands, old opinions and re-analyze them in light of what has happened. And I just would like to express the hope that member states will come together and that they will realize that in order to protect their citizens in their countries, they simply have to find means of combating this scourge. But this is a complex issue, and certainly one has to look across to the reasons why these crimes are committed. And that's of course an important task, that's sort of beyond my responsibilities in the Organization, but many talk in those terms.

HOYOS: Dr. Corel, I would like to ask you about article 51; that's an incredibly important article, which I think I should read for our viewers. You probably know it off by heart, but it's the article on which the US maintains that it has the right to fight back following September 11th, and it forms the legal basis for what is the basis for the Afghanistan bombing for Washington: "Nothing in the present charter shall impair the inherent right of an individual or collective self defense if an armed attack occurs against a member of the United Nations...", and here is the critical part: "...until the Security Council has taken measures necessary to maintain international peace and security." I would just like to get your views on that article very quickly as we are running out of time, and specifically the second section of that sentence.

CORELL: As I just said, it is for the Council itself to construe its resolutions. What happened was that the Council adopted a new resolution in which there was a reference to article 51, and then in accordance with article 51, the two states concerned have reported to the Council and the Council has received this report. And we will see how the Council deals with this in the future. But I think this is all I have to say for the very simple reason that the Council is seized with this matter, and it follows this on a daily basis.

BASSIR POUR: Can these attacks of September 11 be considered armed aggression against a country?

CORELL: I do not know the facts. Yet, and...

BASSIR POUR: I mean you saw a plane fly into the building...

CORELL: Yes, yes, but we don't know all the facts here, and because of my profession, I would be very careful and would like to see the facts before I can express an opinion. I think that is evident that it is a flagrant case of terrorism, there's no doubt about it, but let us see what the future will appear to us.

BASSIR POUR: I will try another thing. The sending of Anthrax in envelopes to people, is that an act of terrorism?

CORELL: To send anthrax to someone is a crime, and most people caught in the world, and you see the criteria for defining terrorism, is that it is in the first place a right-out crime, it could be a murder, it could be assault, it could be the causing bodily harm or this kind of crime. The addition here is that the crime is committed with the intent to cause fear among the population, or force a government to do something or not to do something. But until you know the facts, it is very difficult to have an opinion on the question that you mentioned. Who did it? And why? That's very important.

LITTLEJOHNS: Is there a biological warfare convention that could be invoked?

CORELL: There are conventions against biological warfare and whether this can be invoked here, it is too early to say. If this is an act of an individual, with no other purpose than just to commit the act, then it is not a question of warfare, but I think again, I have to reiterate, we have to see the facts before we can answer that question.

LITTLEJOHNS: Mr. Corell, that's all the time we have. Thank you for being with us on this edition of **World Chronicle**.

Our guest has been Hans Corell, Under Secretary-General for Legal Affairs at the United Nations. He was interviewed by Afsane Bassir Pour of *Le Monde* and Carola Hoyos of *The Financial Times*.

I'm Michael Littlejohns. Thank you for joining us. We invite you to be with us for the next edition of **World Chronicle**.

ANNOUNCER: Transcripts of the programme may be obtained free of charge by sending a stamped, self-addressed envelope to **World Chronicle**, United Nations, Room S-827, New York, N.Y., 10017.

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